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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/423,916	02/28/2000	ANDREAS METELSKI	288.999651	7293

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HODGSON RUSS LLP  
INTELLECTUAL PROPERTY LAW GROUP  
ONE M & T PLAZA  
SUITE 2000  
BUFFALO, NY 14203-2391

EXAMINER

MARSH, STEVEN M

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 07/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/423,916	METELSKI ET AL.
Examiner	Art Unit	
Steven M Marsh	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 April 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 14-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 14-42, 44 and 45 is/are rejected.
- 7) Claim(s) 43 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

This is the second office action for U.S. Application 09/423,916 for a Microscope Stand, Especially for a Surgical Microscope filed by Andreas Metelski et al. on February 28, 2000.

### ***Allowable Subject Matter***

Claim 43 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Claim Rejections - 35 USC § 103***

Claims 14-39, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,609,316 to Tigliev in view of U.S. Patent 3,850,307 to Motoda in further view of U.S. Patent 5,425,068 to Schaefer et al. Tigliev discloses a microscope stand having a plurality of support members (30,34,40). The support members are connected by metallic interfaces that form a stress free connection between the adjacent parts. The stand has either positioning feet or wheels (see column 2, line 47) and elastomeric pads can be provided as a damping layer between either the wheels and the base (see column 2 line 46) or the base and the floor. Tigliev does not specifically disclose tubular support members.

Motoda discloses an article handling apparatus with a parallel linkage having a plurality of support members. One of the support members (36) is tubular and has an

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internal structure. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have provided a tubular support member on the apparatus taught by Tigliev, as taught by Motoda, for the purpose of allowing an internal structure to be provided in one of the support members.

Schaefer et al. discloses an aluminum extruded profile (14) that is glued, riveted, or rolled to a surrounding, fiber reinforced plastic (12) for the purpose of absorbing anticipated loads. Schaefer et al. does not explicitly state that the purpose of surrounding the aluminum extruded profile with a fiber reinforced plastic is to optimize weight/vibration behavior (instead citing cost), but that is accomplished by the design. It would have been obvious to one of ordinary skill in the art at the time of the present invention to have used a composite structure tube of aluminum and fiber reinforced plastic, as taught by Schaefer et al., instead of the tubular support member taught by Tigliev in view of Motoda, for the purpose of providing a strong, lightweight support member. Claims 19-23 and 25-27 are a matter of engineering preference and are therefore obvious. (also see Schaefer et al, column 2, line 55). The features of Claims 44 and 45 are well known to a person of ordinary skill in the art.

Claims 40 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tigliev in view of Motoda, in further view of Schaefer et al, and in further view of U.S. Patent 4,690,960 to Yamauchi et al. Tigliev in view of Motoda, in further view of Schaefer et al. does not disclose a base consisting of two plates rigidly connected around a honeycomb structure. Yamauchi et al. discloses a bed for supporting a microscope (see Column 1, lines 16-25). The bed consists of two plates (72 and 73)

fastened around an aluminum honeycomb structure by an adhesive. It would have been obvious to one of ordinary skill in the art at the time of the present invention, to have utilized the teaching of Yamauchi et al. and insert a honeycomb structure in the base taught by Tigliev in view of Motoda, in further view of Schaefer et al., for the purpose of providing a lightweight, vibration dampening base.

Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tigliev in view of Motoda, in further view of Schaefer et al, and in further view of U.S. Patent 3,637,233 to Hoppl et al. Tigliev in view of Motoda, in further view of Schaefer et al. does not disclose a positioning means for lowering the feet of the base. Hoppl et al. disclose a microscope stand with a base, which has wheels (41 and 43) and feet (36 and 37), as well as a means for simultaneously lowering the feet (54). It would have been obvious to one of ordinary skill in the art at the time of the present invention to have utilized the base taught by Hoppl et al., with the microscope stand taught by Tigliev in view of Motoda, in further view of Schaefer et al., for the purpose of providing a microscope stand with a means for switching between mobile and stationary.

#### ***Response to Arguments***

Applicant's arguments filed April 23, 2002 have been fully considered but they are not persuasive. In response to applicant's argument that the claimed invention runs contrary to the goals of Schaefer et al. because replacing the aluminum extrusion and plastic covers of Schaefer et al with concentric tubes would make it exceedingly difficult to roll an arcuate C-bend, the test for obviousness is not whether the features of

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a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In the instant case, the Motoda reference was used as a teaching for tubular support members on the microscope stand taught by Tigliev, which Applicant has admitted are well known in the art. While the member (36) from Motoda is not subject to a flexural stress, the support members of Tigliev are subject to a flexural stress. Schaefer et al. teaches an aluminum extruded profile surrounded by a fiber reinforced plastic for the purpose of absorbing anticipated loads. The extrusion and plastic covers of Schaefer are not being replaced, rather the teaching of surrounding aluminum with fiber-reinforced plastic is being utilized on the microscope stand taught by Tigliev in view of Motoda. The support members of Tigliev in view of Motoda would be tubular and therefore the aluminum surrounded by a fiber reinforced plastic would result in concentric tubes.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Marsh whose telephone number is (703) 305-0098. The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30 PM. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3597.

S  
m  
Steven Marsh

July 11, 2002

  
ANITA KING  
PRIMARY EXAMINER